

SERVICE DATE – APRIL 11, 2017

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 768X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN GREENBRIER
AND FAYETTE COUNTIES, W. VA.

Decided: April 10, 2017

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 6.0-mile rail line on its Southern Region, Florence Division, Sewell Valley Subdivision, between milepost CAF 21.0 and the end of the track at milepost CAF 27.0 near Rainelle, in Greenbrier and Fayette Counties, W. Va. (the Line).¹ Notice of the exemption was served and published in the Federal Register on January 27, 2017 (82 Fed. Reg. 8,648). The exemption became effective on February 28, 2017.²

On March 1, 2017, as supplemented on March 15, 2017, the Greenbrier County Commission, on behalf of Greenbrier and Fayette Counties, (the Counties), late-filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with CSXT for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.³ Pursuant to 49 C.F.R. § 1152.29, the Counties

¹ CSXT was authorized to discontinue service over the Line in 2016. CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Greenbrier & Fayette Ctys, W. Va., AB 55 (Sub-No. 759X) (STB served April 4, 2016). By letter dated May 6, 2016, CSXT informed the Board that it had consummated the discontinuance of the Line.

² On February 9, 2017, JJ Resources, LLC (JJR) late-filed a formal expression of intent to file an offer of financial assistance (OFA) to purchase the Line. JJR submitted a petition for leave to late-file its notice of intent. On February 22, 2017, JJR filed a request to toll the due date to submit an OFA until at least 10 days after CSXT provided it with the information specified at 49 C.F.R. § 1152.27(a) along with certain other information. On February 27, 2017, JJR filed a letter withdrawing its notice of intent and petitions for leave and to toll the OFA period. JJR states that CSXT has been notified of the withdrawal of these pleadings. Therefore, the effective date of exemption remained February 28, 2017. The exemption is subject only to employee protective conditions.

³ Requests for interim trail use/rail banking were to be filed by February 6, 2017. See CSX Transp.—Aban. Exemption—in Greenbrier & Fayette Ctys., W. Va., AB 55 (Sub-No. 768X), (STB served Jan. 27, 2017). However, in Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the

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have also submitted a statement of willingness to assume financial responsibility for the right-of-way and have acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a letter filed on March 16, 2017, CSXT notified the Board that it agrees to negotiate with the Counties for a NITU.

Because the Counties' request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, CSXT may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The Counties also late-filed a request for imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. The Counties asks that CSXT be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, for a 180-day period from the effective date of the abandonment authorization. The Counties' justification for its request is that this corridor has considerable value for recreational trail purposes and that the 180-day period is needed to assemble and review title information, complete a trail plan, and begin negotiations with CSXT. In its March 16, 2017 letter, CSXT "expresses its non-opposition" to the public use condition.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the Counties satisfied these requirements, a 180-day public use condition will be imposed, requiring CSXT to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of

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Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that the Counties late-filed request will prejudice any party, it will be accepted.

the corridor (other than tracks, ties, and signal equipment), commencing from February 28, 2017, the effective date of the exemption.

When proper requests for interim trail use/rail banking and public use conditions are made, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on August 27, 2017, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until October 8, 2017. If a trail use agreement is reached for a portion of the right-of-way prior to October 8, 2017, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with the Counties, but may engage in negotiations with other interested persons.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The Counties' late-filed requests for a NITU under 16 U.S.C. 1247(d) and a public use condition are accepted and granted.
3. Upon reconsideration, the January 27, 2017 decision exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the Counties to negotiate with CSXT for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until October 8, 2017, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the effective date of the exemption, until August 27, 2017.
4. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, CSXT may discontinue service. CSXT shall keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of the exemption, until August 27, 2017, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

5. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

6. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 5 above.

7. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

8. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

9. If an agreement for interim trail use/rail banking is reached by October 8, 2017, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line.

10. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.